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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,637	12/12/2000	Greg Volgas	HCC-9 (306*141)	4754
23416	7590	04/08/2004	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			METZMAIER, DANIEL S	
P O BOX 2207			ART UNIT	PAPER NUMBER
WILMINGTON, DE 19899			1712	

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/734,637	<b>Applicant(s)</b> VOLGAS ET AL.	
	<b>Examiner</b> Daniel S. Metzmaier	<b>Art Unit</b> 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 42-46 and 52-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-46, 52-54, 56-60, 62-67 and 69 is/are rejected.
- 7) ☒ Claim(s) 55, 61 and 68 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 42-46 and 52-69 are pending.

#### ***Allowable Subject Matter***

1. The indicated allowability of claims are withdrawn in view of the newly discovered reference(s) to Constien et al, US 4,828,034. Rejections based on the newly cited reference(s) follow.

#### ***Claim Objections***

2. Claim 62 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 62 is dependent on claim 42 and sets forth the limitation found in the proviso of claim 42.

#### ***Double Patenting***

3. Claims 63-66 and 69 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 43-46 and 67, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 42-46, 62-67 and 69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is the scope of the claimed subject matter due to the limitation "no added water". Since the compositions are formed by mere blending of the various components, any water is necessarily added if present. A review of the specification fails to clarify this limitation. It is unclear what applicants contemplate as added water.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 42-45, 52-54, 56-60 and 62-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Constien et al, 4,828,034. Constien et al (abstract and claims) discloses methods of hydrating a slurry concentrate of guar derivatives in hydrophobic carrier fluid. Constien et al (column 5, lines 6-22) discloses suitable oils including mineral oil. Constien et al (column 5, lines 23 et seq; and column 6, lines 64 et seq) discloses the formation of a guar/oil composition. Constien et al (column 5, lines 44 et seq) discloses the use of Bentone SD-1, which is a silicon based thickener based on aluminum silicate. Claims 42-45, 56-60 and 62-65 read on agricultural adjuvants, which applicants set forth (see page 5 of the January 8, 2004 response) as including wetting

agents, dispersing agents, or defoaming agents among others. The Constien et al reference reads on at least some of the agricultural adjuvants as defined by applicants.

8. Claims 42, 56, 57, 59, 60, 62, 64 and 65 are rejected under 35 U.S.C. 5 102(b) as being clearly anticipated by Seheult et al., 4,717,488, esp. Example 1, Sample Nos. 2-7. Applicants define agricultural adjuvant as including wetting agents, dispersing agents, or defoaming agents among others. The Seheult et al reference discloses at least a dispersing agent and/or wetting agent.

***Allowable Subject Matter***

9. Claims 55, 61 and 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments filed January 8, 2004 have been fully considered but they are not persuasive.

11. Applicants (pages 5 and 6) disclose the references fail to disclose the incorporation of a pesticide and the claims have been limited to a pesticide or agricultural adjuvant. Since agricultural adjuvant overlaps with the surfactant components of the prior art, said claims reading on an agricultural adjuvant are not deemed to be distinct. Attention is further directed to applicants' response at page 5 wherein applicants set forth the agricultural adjuvant reads on wetting agents and dispersing agents.

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12. Applicant's arguments with respect to the remaining claims have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Daniel S. Metzmaier  
Primary Examiner  
Art Unit 1712

DSM